

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

GLORIA JEAN DAVIS,

Plaintiff,

VS.

**GREENPOINT MORTGAGE
FUNDING, INC., BAC HOME
LOANS SERVICING, LP,
FEDERAL NATIONAL
MORTGAGE ASSOCIATION,
N.A., JOHN DOE 1 and JOHN
DOE 2,**

Defendants.

CIVIL ACTION

NO. 1:09-CV-2719-CC-LTW

**PLAINTIFF’S MOTION FOR LEAVE TO FILE SECOND AMENDED
COMPLAINT, WITH INCORPORATED MEMORANDUM OF LAW**

Plaintiff moves the Court, under Rule 15(a) of the Federal Rules of Civil Procedure, for an order granting her leave to file the Second Amended Complaint attached as Exhibit 1 hereto. In support of this motion, Plaintiff states:

1. In an Order [Doc. No. 34] dated July 6, 2010 this Court adopted the Report and Recommendation [Doc. No. 23] of Magistrate Judge Linda T. Walker, which, among other things, disallowed Plaintiff's claims against BAC Home Loans Servicing, LP, ("BAC Home Loans") for its violations of the mortgage owner

identification requirements in the Truth in Lending Act (“TILA”) at 15 U.S.C. § 1641(f)(2).

2. The proposed second amended complaint seeks to add claims for vicarious liability for the above violations against GreenPoint Mortgage Funding, Inc. (“GreenPoint”), Federal National Mortgage Association, N.A. (“Fannie Mae”), and John Doe 2 (should Fannie Mae not be the current holder of the \$110,400 mortgage loan dated September 25, 2006). Vicarious liability is appropriate since BAC Home Loans is the servicer of both of the mortgage loans in issue, and, as such, is the agent of the mortgage holders GreenPoint and Fannie Mae (or John Doe 2).

3. The present motion is supported by the decision in Consumer Solutions REO, LLC v. Hillery, No. C-08-4357, 2010 U.S. Dist. LEXIS 1437, *10-12 (N.D. Cal. Jan. 8, 2010). In that case the court permitted the amending of a complaint to assert a claim for vicarious liability against the holder of the mortgage based on the servicer's violation of section 1641(f)(2). Plaintiff seeks the same kind of amendment.¹

¹ It should be noted that the propriety of this amendment was urged, without any opposition by Defendants, in Plaintiff’s Objections to Magistrate Judge’s Report and Recommendation [Doc. No. 25] and in Plaintiff’s Reply in Support of Objections to Magistrate Judge’s Report and Recommendation [Doc. No. 31]. The Court declined to address this issue; it did not resolve it.

4. Plaintiff seeks in good faith to amend her pleading to better and more fully state her claims. The offered amendments are not for purposes of delay.

MEMORANDUM OF LAW

Rule 15(a) mandates that leave to amend be freely given when justice so requires. Foman v. Davis, 371 U.S. 178 (1962). This Rule “circumscribes the exercise of the district court’s discretion; thus, unless a substantial reason exists to deny leave to amend, the discretion of the district court is not broad enough to permit denial.” Shipner v. Eastern Air Lines, Inc., 868 F.2d 401, 407 (11th Cir. 1989) (emphasis added). There is no reason herein for denial of Plaintiff’s requested amendment. The new claims for vicarious liability of the mortgage holders were necessitated by the Court’s recent decision that Plaintiff could not pursue direct liability for the challenged conduct. Furthermore, none of the factors listed in Foman as possible grounds for denying amendment (i.e., undue delay, bad faith or dilatory motive, repetitive amendments, undue prejudice, futility) is present. Accordingly, the present motion must be granted. Moore v. Baker, 989 F.2d 1129, 1131 (11th Cir. 1993) (“a justifying reason must be apparent for denial of a motion to amend”) (emphasis added).

WHEREFORE, Plaintiff moves the Court for an order granting the relief requested above.

LOCAL RULE 7.1D CERTIFICATION

The undersigned certifies that this document was prepared in Times New Roman (14 point) font, one of the font and point selections approved by Local Rule 5.1C.

s/Stacey Hillock
Stacey Hillock
Georgia Bar No. 140941

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CERTIFICATE OF SERVICE

I hereby certify that on July 16, 2010, I electronically filed the foregoing document, using the CM/ECF system which will automatically send e-mail notification of such filing to the following attorneys of record: Kevin C. Waters, and Darren E. Gaynor.

s/Stacey Hillock
Stacey Hillock
Georgia Bar No. 140941